

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
COLUMBIA DIVISION**

**ANTHONY E. GOOCH, individually and )  
on behalf of all similarly situated individuals, )  
  )  
  )  
Plaintiff,    )  
  )  
  )  
v.    )  
  )  
  )  
**LIFE INVESTORS INSURANCE                            )  
COMPANY OF AMERICA;                                    )  
AEGON USA, Inc.    )  
  )  
Defendants.    )****

**PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO  
COUNT I SEEKING DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW the plaintiff, Anthony E. Gooch ("Gooch), and hereby files Plaintiff's Cross-Motion for Partial Summary Judgment as to Count I Seeking Declaratory and Injunctive Relief on behalf of himself and all members of the proposed class. In support of this Cross-Motion for Partial Summary Judgment, Gooch states as follows:

1. In this motion, Gooch respectfully requests that this Court enter a partial summary judgment in favor of Plaintiff as to Count I for declaratory and injunctive relief based on (1) the plain language of the Policy using well-established rules of contractual interpretation, or alternatively (2) Life Investors' long-standing course of conduct involving the payment of "actual charges" benefits based on the amounts of medical bills.

2. Gooch respectfully shows the Court that there are no disputed issues of material fact concerning Count I of the Complaint, in that entitlement to relief is based on the four corners of the Policy at issue. Accordingly, interpretation of that Policy is a matter of law appropriate for summary judgment granting declaratory and injunctive relief under Count I of the Complaint.

3. Gooch further shows that, to the extent the Court should determine an ambiguity exists in said Policy, it is undisputed that Life Investors paid “actual charges” benefits to Gooch in a manner consistent with the interpretation that “actual charges” are indexed to medical bills instead of amounts other insurance companies paid in a final negotiated settlement of class members’ health insurance claims. Gooch shows that Life Investors’ conduct in this regard is dispositive in the event of an ambiguity concerning the meaning of “actual charges.”

4. In support of this Cross-Motion, Gooch respectfully refers the Court to the points and authorities set forth in his contemporaneously filed Memorandum In Support Of Plaintiff’s Cross-Motion for Partial Summary Judgment as to Count I Seeking Declaratory and Injunctive Relief and Consolidated Evidentiary Submission.

5. Gooch respectfully requests oral argument on these issues.

WHEREFORE, PREMISES CONSIDERED, Gooch respectfully requests that this Honorable Court enter a partial summary judgment in his favor as to Count I of the Complaint.

/s/ M. Clayborn Williams  
*Counsel for Plaintiffs*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following counsel of record via the Court's electronic filing system, this the 12<sup>th</sup> day of July, 2007.

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